

IN RE: Annual Review of Base Rates for Fuel Costs of Duke Power.) ORDER APPROVING
) BASE RATES FOR
) FUEL COSTS

At the public hearing, William F. Austin, Esquire and W. Larry Porter, Esquire, represented the Company; Charles M. Knight, Esquire, and Elliott F. Elam, Jr., Esquire, represented the Intervenor, the Consumer Advocate for the State of South Carolina (the Consumer Advocate); and F. David Butler, General Counsel, represented the Commission Staff. The record before the Commission consists of the testimony of one witness on behalf of the Company, two witnesses on behalf of the Commission Staff, and five (5) hearing exhibits.

Based upon the evidence of the record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The record of this proceeding indicates that for the period from April 2001 through March 2002, the Company's actual total fuel costs for its electric operations amounted to \$747,685,536. Hearing Exhibit No. 4, Audit Exhibit E.

2. Staff reviewed and compiled a percentage generation mix statistic sheet for the Company's fossil, nuclear and hydro-electric plants for April 2001 through March 2002. The fossil generation ranged from a high of 47% in August, 2001 to a low of 35% in November, 2001. The nuclear generation ranged from a high of 65% in November 2001 to a low of 53% in August, 2001. The percentage of generation by hydro ranged from 0% to 1% for this period. Hearing Exhibit No. 5; Utilities Department Exhibit No. 3.

3. During the April 2001 through March 2002 period, coal suppliers delivered 17,737,822.50 tons of coal. The Commission Staff's audit of the Company's actual fuel procurement activities demonstrated that the average monthly cost of coal varied from \$38.24 per ton in December, 2001 to \$42.83 per ton in July, 2001. Hearing Exhibit No. 4, Audit Exhibit A.

4. Staff collected and reviewed certain generation statistics of major Company plants for the twelve months ending March 31, 2002. Hearing Exhibit No. 5, Utilities Department Exhibit No. 4. The nuclear fueled Catawba Plant was lowest cost at

0.40 cents per kilowatt-hour. The highest amount of generation was 20,143,759 megawatt-hours produced at the nuclear fueled Oconee Plant.

5. The Commission Staff conducted an extensive review and audit of the Company's fuel purchasing practices and procedures for the subject period. The Staff's audit witness, Jacqueline R. Cherry, testified that the Company's fuel costs were supported by the Company's books and records. Testimony of Cherry, Hearing Exhibit No. 2; Audit Department Exhibits.

6. The Commission recognizes that the approval of the currently effective methodology for recognition of the Company's fuel costs require the use of anticipated or projected costs of fuel. The Commission further recognizes the fact inherent in the utilization of a projected average fuel cost for the establishment of the fuel component in the Company's base rates that variations between the actual costs of fuel and projected costs of fuel would occur during the period and would likely exist at the conclusion of the period. S.C. Code Ann. §58-27-865 establishes a procedure whereby the difference between the recovery of fuel costs through base rates and the actual fuel costs incurred would be accounted for by booking the difference to unbilled revenues with a corresponding deferred debit or credit.

7. The record of this proceeding indicates that the comparison of the Company's fuel revenues and expenses for the period April 2001 through March 2002 produces a cumulative over-recovery of \$7,446,417. Staff added the projected under-

recovery of \$405,518 for April 2002 and the projected under-recovery of \$2,823,060 for May 2002 to arrive at a cumulative over-recovery of \$4,217,839. Cherry testimony at 2.

8. The Company's projected average fuel expense for the June 2002 through May 2003 period is 1.0289 cents per kilowatt-hour. Hearing Exhibit No. 1, Young Revised Exhibit No. 8.

9. Company witness Steve Young, Vice President, Rates and Regulatory Affairs, proposes that the fuel component remain at 0.9500 cents per kilowatt-hour in base rates, effective June 1, 2002. Young Testimony at 12.

The exhibits of Staff witness A.R. Watts show that if the base fuel component remains at 0.9500 cents per kilowatt-hour for this period, it will produce an estimated under-recovery of \$17,164,696. Hearing Exhibit No. 5, Utilities Department Exhibit No. 10.

10. During the period under review, several outages occurred at the Company's nuclear plants. The Commission Staff looked at each plant outage by review of Company reports and correspondence between the Company and the Nuclear Regulatory Commission (NRC) concerning the outages which required reporting. The Staff then spent time with Company representatives to discuss each outage and the sequence of events which lead to the outage and those which dictated the duration of the outages. The Staff testified that there were no Company actions which subjected Duke's customers to incurring higher fuel costs. The actual average nuclear system capacity factor for the review period is 93.3%. The major fossil units averaged over 95% availability for the majority of the period under review. Testimony of Watts at 2.

Company witness Young noted that the Company's achieved capacity factor reflecting reasonable outage time was greater than 92.5% for the current period. Testimony of Young at 10, Hearing Exhibit 1, Young Exhibit 6.

CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. Section 58-27-865(B)(Supp. 2001), each electrical utility must submit to the Commission its estimates of fuel costs for the next twelve (12) months. Following an investigation of these estimates, and after a public hearing, the Commission directs each electrical utility "to place in effect in its base rate an amount designed to recover, during the succeeding twelve months, the fuel costs determined by the Commission to be appropriate for that period, adjusted for the over-recovery or under-recovery from the preceding twelve-month period." Id.

2. As stated by the Supreme Court in Hamm v. South Carolina Public Service Commission, 291 S.C. 178, 352 S.E.2d 476, 478 (1987), Section 58-27-865(F) requires the Commission "to evaluate the conduct of the utility in making the decisions which resulted in the higher fuel costs. If the utility has acted unreasonably, and higher fuel costs are incurred as a result, the utility should not be permitted to pass along the higher fuel costs to its customers." "[T]he rule does not require the utility to show that its conduct was free from human error; rather it must show it took reasonable steps to safeguard against error." Id. at 478, citing Virginia Electric and Power Co. v. The Division of Consumer Council, 220 Va. 930, 265 S.E.2d 697 (1980).

3. The Commission recognizes that Section 58-27-865(F) provides it with the authority to consider the electrical utility's reliability of service, its economical

generation mix, the generating experience of comparable facilities, and its minimization of the total cost of providing service in determining to disallow the recovery of any fuel costs.

4. Further, S.C. Code Ann. Section 58-27-865(F) (Supp. 2001) provides that:

[t]here shall be a rebuttable presumption that an electrical utility made every reasonable effort to minimize cost associated with the operation of its nuclear generation facility or system.... if the utility achieved a net capacity factor of ninety-two and one-half percent or higher during the period under review. The calculation of the net capacity factor shall exclude reasonable outage time associated with reasonable refueling, reasonable maintenance, reasonable repair, and reasonable equipment replacement outages; the reasonable reduced power generation experienced by nuclear units as they approach a refueling outage; the reasonable reduced power generation experienced by nuclear units associated with bringing a unit back to full power after an outage; Nuclear Regulatory Commission required testing outages unless due to the unreasonable acts of the utility; outages found by the [C]ommission not to be within the reasonable control of the utility; and acts of God. The calculation also shall exclude reasonable reduced power operations resulting from the demand for electricity being less than the full power output of the utility's nuclear generation system. If the net capacity factor is below ninety-two and one-half percent after reflecting the above specified outage time, then the utility shall have the burden of demonstrating the reasonableness of its nuclear operations during the period under review.

5. This Commission has reviewed, i) all of the evidence of record in this docket, ii) the operating efficiencies of the Company during the review period, and iii) Staff testimony and exhibits and we find that Duke has met the test of the applicable statute. We have reviewed each outage and the sequence of events which led to each outage and conclude that the outages were the result of reasonable maintenance and equipment repair and replacement. We find that there were no acts of the utility which were imprudent or which subjected Duke's customers to incurring higher fuel costs.

Therefore, no disallowance of fuel costs during the review period is justified and we find that Duke took reasonable steps to safeguard against error and to minimize the total costs of providing service. We find that the Company's net capacity factor for the review period, adjusted for reasonable refueling and other outages, exceeds the 92.5% threshold required by the statute.

6. After considering the directives of S.C. Code Ann. Section 58-27-865(B) which requires the Commission to place in effect a base fuel cost which allows the Company to recover its fuel costs for the next twelve months adjusted for the over-recovery or under-recovery from the preceding twelve month period, the Commission has determined that the appropriate base fuel factor for the period June 1, 2002 through May 2003 is 0.9500 cent per kilowatt-hour. The Commission finds that a 0.9500 cent per kilowatt-hour component will allow Duke to recover its projected fuel costs and, at the same time, prevent abrupt changes in charges to Duke's customers.

IT IS THEREFORE ORDERED THAT:

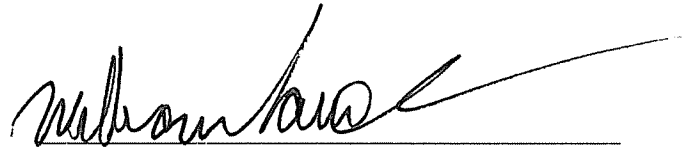
1. The base fuel factor for the period June 2002 through May 2003 is set at 0.9500 cent per kilowatt-hour.
2. Duke shall file an original and ten (10) copies of the fuel tariff within ten (10) days of the receipt of this Order.
3. Duke shall comply with the notice requirements set forth in S. C. Code Ann. Section 58-27-865(B) (Supp. 2001).
4. Duke shall continue to file the monthly reports as previously required.

5. Duke shall account monthly to the Commission for the differences between the recovery of fuel costs through base rates and the actual fuel costs experienced by booking the difference to unbilled revenues with a corresponding deferred debit or credit.

6. Duke shall submit monthly reports to the Commission of fuel costs and scheduled and unscheduled outages of generating units with a capacity of 100 MW or greater.

7. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)